

HAWAII BROWNFIELDS CLEANUP REVOLVING LOAN FUND

State of Hawaii • City & County of Honolulu • County of Maui

LOAN APPLICATION

Applicant:

Dept of Hawaiian Home Lands

LOAN APPLICATION CHECKLIST

Please use the following checklist to ensure that your application for a loan from the Hawaii Brownfields Cleanup Revolving Loan Fund (HBCRLF) is complete. Incomplete application packages and missing documentation will result in delays in processing your application and may result in your loan application being denied.

Application and Required Forms (filled out completely and signed):

- ☒ HBCRLF Loan Application
- ☒ Applicant Certification of Eligibility and Terms
- ☒ Applicant Consent to Publication
- ☒ Certification Regarding Lobbying, EPA Form 6600-06 (06/2008)

Financial Information:

- ☒ Statement of Legal Authority for Loans or Loan Authorization
- ☒ Proposed Project Budget and Project Pro Forma or Project Monthly Cash Flow
- ☒ Statement of Source of Funds for Loan Repayment
- ☒ Financial Statements for Source of Funds for Loan Repayment (current fiscal year and past three fiscal year-end reports)

Environmental and Other Information:

- ☒ Description of current condition and use of the property, including photograph(s) of the site as it currently exists, unless included in the Phase 1 and 2
- ☒ A site plan showing existing and proposed development plans
- ☒ Copies of Phase I and Phase II Environmental Site Assessments prepared by qualified environmental professionals
- ☒ Proposed cleanup plan and projected cleanup costs
- ☒ A Redevelopment Plan, with supporting documentation that addresses the site's redevelopment potential, job retention/creation potential, community benefits and implementation
- ☒ Agreement for Remedial Action or similar cleanup agreement executed with the Department of Health pursuant to Chapter 128D, Hawaii Revised Statutes, or documentation that Applicant is in the process of executing such an agreement

Contact the State Office of Planning for information or assistance:

Mary Alice Evans, (808) 587-2802, maevans@dbedt.hawaii.gov
Ruby Edwards, (808) 587-2817, redwards@dbedt.hawaii.gov

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I. APPLICANT DATA

Applicant Name State of Hawaii, Department of Hawaiian Home Lands
Street Address 91-5420 Kapolei Parkway, Kapolei, HI 96707
Mailing Address P.O. Box 1879, Honolulu, HI 96805
(if different from street address)
Telephone (808) 620-9501
Fax (808) 620-9529

Agency Representative Authorized to Sign Loan Application:

Name and Title Micah A. Kane, Chairman, Hawaiian Homes Commission
Telephone (808) 620-9501

Agency Project Contact Person:

Name and Title Darrell Ing, Real Estate Development Specialist
Address
(if different from above)
Telephone (808) 620-9276
Email Address darrell.h.ing@hawaii.gov

II. PROJECT DESCRIPTION & PROPERTY INFORMATION

Project/Site Name East Kapolei Pesticide Mixing & Loading Area Remediation
Project Address No assigned street address, off Palehua Road, Honouliuli, Ewa, Oahu
Tax Map Key No/s. (1) 9-1-017: 093 (por)

- a. Does the Applicant own the property? ☒ Yes ☐ No
▶ If YES, attach deed or executive order transferring title
▶ If NO, specify below the current legal owner, timing, and proposed method of taking ownership of the property

Deed attached.

- b. Does the applicant have legal access to the property? ☒ Yes ☐ No
▶ If NO, explain below how access will be gained and by what date, and provide a copy of written agreements, if any

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- c. Describe the history of uses of the site and existing site conditions, existing structures, and current uses

The site and surrounding lands were leased from the Estate of James Campbell and used to cultivate sugarcane from around 1890 to 1994. The Oahu Sugar Company, Ltd. used the site for pesticide mixing and loading operations from around 1953 to 1994, when Oahu Sugar ceased all operations and closed down. The State of Hawaii acquired the site on August 22, 1994 through condemnation; title was transferred to DHHL in February 2009. The mixing plant has not been operated, and the site has not been used, since Oahu Sugar ended operations and the State acquired the site in 1994. Structures remaining include a two storage buildings, a boiler, and four elevated steel storage tanks. The site is fenced and locked. The field roads immediately outside the fenced area will be included as part of the proposed cleanup. The surrounding lands are used for diversified agriculture or are fallow.

- d. Describe the nature of contamination at the site, include sources, dates, and levels of contamination

► *Submit copies of all Phase I and Phase II environmental assessment reports for the site*

Agricultural pesticides were stored, mixed, and loaded for field application at the site for almost 40 years. Pentachlorophenol with diesel or kerosene was also mixed and applied in the 1950s. Soils at the site became contaminated as a result of periodic chemical spills that occurred over the years. Such spills were typically not cleaned up by plantation workers. Periodic rainstorms and stormwater runoff over the years and truck movement on and off the site appear to have resulted in the dispersal of pesticide and contaminants outside the fenced site. Surface and subsurface soil sampling has documented elevated levels of the following within the fenced site: dioxins/furans, arsenic, pentachlorophenol, dieldrin, diuron, atrazine, ametryn, trifluralin, terbacil, hexazinone, DDT, and other chemicals. Contamination levels are highest around the elevated storage tanks and boiler house. Laboratory analysis of samples taken in 2000 indicated dioxin concentration levels ranging from 0.065 – 333.6 ppb in the surface soils, above both the EPA Region 9 Preliminary Remediation Goals (PRGs) for residential soils of 0.0039 ppb and the EPA OSWER Directive of 1 ppb. Total dioxins/furans concentrations (TCDD TEQ) in soil decreased with depth, but were still above the EPA Directive of 1 ppb at 4 ft. Analysis of samples taken in 2007 at depths of six feet and more indicate that contaminant concentrations were below federal and State action levels. In 2007, additional surface soil samples were taken at 50 and 100 feet from the fenced area to determine the lateral extent of contamination. Laboratory results of several soil samples from outside the fenced area indicated elevated levels of dioxin above the 390 ng/kg (DOH "high risk" threshold for a future residential site). Analysis of groundwater samples taken in 2007 did not find contaminants at levels above federal or State action levels. Phase I and Phase II reports are attached.

- e. Describe the proposed cleanup plan

A final remedy will be selected from an alternatives analysis, based in part on the 2007 Preliminary Remedial Alternatives Analysis Report prepared for the site. The cleanup plan/process will include: (1) pre-plan community review and comment on remedial alternatives; (2) pre-plan preparation of a final cleanup plan, design, and necessary quality assurance, health and safety plans; (3) demolition of existing structures and disposal of contaminated structural waste; (4) remediation of the site either through construction of a geomembrane liner and cap, or soil treatment using thermal desorption; (6) confirmation sampling at appropriate stages; and (7) implementation of a long-term monitoring and maintenance program as necessary. DHHL's consultant will engineer the remediation work and site design, obtain the necessary permits and approvals, and oversee and monitor all aspects of the remediation, ensuring its compliance with all applicable federal, State, and county laws. DHHL is in the process of entering into an Agreement for Remedial Action with the Department of Health's HEER Office. Evidence of the intent to enter into an agreement with DOH is attached.

Proposed start date for cleanup work August 2009

Expected end date for cleanup work August 2010

► *Attach evidence of an Agreement for Remedial Action or similar cleanup agreement with the State Department of Health (DOH)*

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- f. Describe the proposed use of the site post-cleanup and proposed redevelopment plans

The site is planned to be a 5-acre park as part of a 375-acre master-planned development, East Kapolei II, that will include 1,000 for-sale affordable homes for native Hawaiians and 1,000 affordable rental units for the general public, as well as schools, parks, and a major new community center to be built by the Salvation Army. DHHL will be investing over \$450 million in planning, site improvements, infrastructure development, and housing construction for the East Kapolei II project. The project is also investing in regional infrastructure and roadway improvements, including \$20 million for the construction of an East-West Connector Road that will create a vital link between communities in the east Ewa region with the City of Kapolei and communities to the west.

Proposed start date for redevelopment September 2009

Expected end date for redevelopment May 2017

- g. Summarize project need and expected community benefits from cleanup and reuse of the site (e.g., remediation of contamination, job creation, addition to tax base, etc.)

Remediation of the site would remove the real threat of exposure of future residents to contaminated property, and eliminate the risk of contaminants reaching nearshore ocean waters via transport by waterborne contaminated sediments. Cleanup will allow successful completion of East Kapolei II and contribute to facilitating planned urban development in the Ewa region in general, resulting in a mixed-use urban area that provides affordable housing, business development, jobs, educational institutions, community and social services, as well as increasing State tax revenues and City real property tax revenues as the region builds out. The project will provide much-needed affordable housing for 6,000-7,000 native Hawaiians, as well as housing in proximity to job opportunities. Native Hawaiians, as a group, have poorer housing conditions, lower socioeconomic conditions, and higher than average incidences of chronic, debilitating diseases. Continued development of the Ewa region also relieves development pressure on some of the State's best agricultural lands.

III. PROJECT COSTS & LOAN REPAYMENT

a. Total estimated project cost \$2,451,050

Source of cost estimate DHHL, based on PRAA in 2007 Phase II submitted

b. Total loan amount requested \$1,970,000

- c. Describe all other sources of funding for the conduct and completion of the cleanup project and the amount from each funding source

Other sources of funding include:

- (1) \$200,000 brownfields cleanup grant from the U.S. EPA if the Applicant is selected as a 2009 grantee; and
- (2) the balance of the cleanup costs being paid with funds from DHHL's Hawaiian Home Lands Trust Fund.

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d. Describe how loan funds will be used

Loan funds will be used to cover eligible consulting and applicant costs for environmental cleanup activities in conformance with CERCLA/NCP, including preparation of required community involvement plans, QAPP, Health & Safety Plans, preparation of analysis of brownfields cleanup alternatives, preparation of cleanup plan for selected remedy, establishment and maintenance of the administrative record, performance of the cleanup, confirmation sampling, and completion of documentation of the cleanup and institutional controls, as needed.

- ▶ Attach a proposed project budget broken down by activities or cost categories and source of funding, and engineer's estimate of total project cost, if available
- ▶ Attach a project pro forma for the project or monthly cash flow for the project over the loan repayment period

e. Describe the Applicant's legal authority to incur debt

DHHL has the authority to enter into a legally binding obligation to repay a loan, as provided in the Hawaiian Homes Commission Act of 1920, as amended, which is now a part of the Hawaii State Constitution. A letter from the State Department of the Attorney General stating this authority is attached.

- ▶ Attach an opinion of counsel that the applicant has the legal authority to enter into a binding obligation to repay a loan; or a resolution by the council, board, or commission that binds the applicant to repay a loan and states the source of funds for the repayment of a loan

f. Source of funds for loan repayment: list below all sources of funding for loan repayment by the amount of repayment funds from each source

Loan Repayment Source	Amount per Source
Hawaiian Home Lands Trust Fund	\$1,970,000

- ▶ Attach financial statements for each funding source for: (1) the current fiscal year, and (2) the past three fiscal years (agency annual reports with fiscal year-end financial statements may be submitted)

V. ASSURANCES

The undersigned attests that, to the best of my knowledge, the information and assertions contained in this application, the required forms, and the supporting documents is complete, true, and correct; and further, makes the following assurances with respect to this application and the use of loan funds should this loan application be approved:

1. The Applicant has the legal, institutional, managerial and financial capability to ensure the adequate cleanup of the site;
2. The Applicant will use a competitive process for the procurement of construction, goods, and services for the environmental cleanup of the site;
3. The Applicant will diligently pursue project completion in accordance with the terms and conditions of the loan agreement and the project schedule indicated in this application and approved by the DOH, and minimize the time that elapses between payment of HBCRLF funds and the use of those funds to pay costs incurred in the cleanup;

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4. The Applicant will give the Department of Business, Economic Development, and Tourism (DBEDT) and DOH or its assignees, through any authorized representative, access and the right to examine all records, books, papers, and documents related to the loan, and will retain all records for three years following repayment of the loan;
5. The Applicant will maintain financial records of the costs incurred and funds expended in accordance with the generally accepted accounting standards set forth by the Government Accounting Standards Board;
7. The Applicant will furnish progress reports and such other information as DBEDT or DOH may require to monitor the site cleanup and report project performance measures to the U.S. Environmental Protection Agency (EPA); and
8. The Applicant will comply with all applicable federal and State requirements, including all other laws, regulations, policies, and applicable requirements and conditions relating to assistance for this project and the applicable federal "cross-cutting" authorities listed in *Exhibit A* of the Loan Application, which includes: (1) compliance with Section 104(g) of the U.S. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) related to prevailing wage rates in accordance with the Davis Bacon Act; (2) federal financial assistance requirements for good faith efforts to engage minority- and women-owned businesses in procurement awards made with loan funds from the HBCRLF; and (3) compliance with prohibitions on the use of, and failure to disclose the use of, any contractor, consultant, subcontractor, sub-consultant, or supplier that has been debarred or suspended and is on the federal Excluded Parties List.



Signature of Authorized Representative of Applicant

Micah A. Kane, Chairman, Hawaiian Homes Commission

Name and Title of Authorized Representative

APR 13 2009

Date

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APPLICANT CERTIFICATION OF ELIGIBILITY AND TERMS

Applicant	State of Hawaii, Department of Hawaiian Home Lands
Project Name	East Kapolei Pesticide Mixing & Loading Area Remediation
Project Address	Palehua Road, Honouliuli, Ewa, Oahu
Tax Map Key Number/s	(1) 9-1-017: 093 (por)

The undersigned authorized representative hereby certifies that the Loan Applicant:

1. Acquired the proposed project property after the time of disposal or placement of hazardous substances on the property, and further, has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on or emanating from the property, nor arranged for the disposal or treatment of hazardous substances at or from the property;
2. Has not, nor ever has been, subject to any penalties resulting from environmental non-compliance at the property subject to this loan application;
3. Has not been suspended, debarred, or otherwise declared ineligible to receive federal funds;
4. Has provided environmental assessment reports meeting industry-standards that verify: (1) the proposed cleanup responds to a release or threat of a release of hazardous substances as defined in CERCLA, but not petroleum contamination except as it may be co-mingled with hazardous substances; and (2) the proposed cleanup response is a non-time critical removal activity as defined in the National Contingency Plan (NCP);
5. Has the legal authority to incur debt and enter into legally binding agreements to repay debts, and has provided evidence of this in this Loan Application;
6. Has an identified source of funds for loan repayment, and has provided evidence of this in the Application; and
7. Will ensure that the use of loan funds and the conduct of the proposed cleanup complies in all respects with the requirements of CERCLA and the National Contingency Plan (NCP).



Signature of Authorized Representative of Applicant
Micah A. Kane, Chairman, Hawaiian Homes Commission

Name and Title of Authorized Representative

Address P.O. Box 1879, Honolulu, HI 96805

Telephone No. (808) 620-9501

APR 13 2009

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APPLICANT CONSENT TO PUBLICATION

As a participant in the Hawaii Brownfields Cleanup Revolving Loan Fund (HBCRLF) Program, the undersigned agrees to the following conditions:

1. The undersigned agrees that the challenges and successes of the brownfields project may be discussed at any local, state or national meetings or conferences;
2. The undersigned agrees that this brownfields project may be publicized through various media, including brochures, web pages, news articles, and press events. These media may include photos of the project site;
3. The undersigned agrees that the Department of Health may provide all information about this project to the Department of Business, Economic Development and Tourism, the Office of Planning and the relevant county government; and
4. The undersigned understands that the information that is made available will be available to the public and other agencies. The Hawaii Information Practices Act is the state law that governs disclosure of public records.



Signature of Authorized Representative of Applicant

Micah A. Kane, Chairman, Hawaiian Homes Commissi

Name and Title of Authorized Representative

APR 13 2009

Date

Applicant Name	State of Hawaii, Department of Hawaiian Home Lands
Address	P.O. Box 1879, Honolulu, Hawaii 96805
Telephone No.	(808) 620-9501
Fax No.	(808) 620-9529
Email Address	micah.a.kane@hawaii.gov

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Micah A. Kane, Chairman
Hawaiian Homes Commission

Typed Name & Title of Authorized Representative


Signature and Date of Authorized Representative

Loan Application Resources

EXHIBIT A. FEDERAL REQUIREMENTS FOR HBCRLF LOAN RECIPIENTS

For any Hawaii Brownfields Cleanup Revolving Loan Fund (HBCRLF) loan, the Applicant is required to certify that it has complied, or will comply, with all the federal regulations applicable to projects receiving federal financial assistance, known as “cross-cutter” regulations. Federal law in effect when the HBCRLF loan agreement is signed shall apply.

In addition, the Applicant must insert into all consultant and remediation contracts and subcontracts a copy of boilerplate language citing the requirement for compliance with federal cross-cutters, as provided in Item III of this Exhibit.

I. Cross-cutting Regulations for HBCRLF Loan Recipients

A. ENVIRONMENTAL AUTHORITIES:

1. **ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 USC 469a-1**

Should the discovery of potential archaeological or historical resources occur during construction, all work in the area of the find shall stop and the remediation management consultant shall be called in to evaluate the situation and make recommendations to the State Historic Preservation Officer, Department of Land and Natural Resources, State of Hawaii. The Historic Preservation Officer will determine what will be necessary for construction to proceed.

2. **CLEAN AIR ACT, 42 USC 7401**

The recipient must determine the direct and indirect emissions from the proposed remediation and redevelopment project and their impact on air quality. This analysis must determine if the project conforms to the State Implementation Plan (SIP).

3. **COASTAL BARRIERS RESOURCES ACT, 16 USC 3501**

This Act does not apply to the State of Hawaii at this time.

4. **COASTAL ZONE MANAGEMENT ACT, 16 USC 1451**

The Hawaii Coastal Zone Management (CZM) Program has determined that CZM consistency requirements for federal assistance do not apply to the HBCRLF. Therefore, HBCRLF applicants are not required to consult with the CZM Program and obtain a consistency concurrence. Projects located within the Special Management Area (SMA) may need to obtain SMA permit approval from the applicable county planning department, or the State Office of Planning for the Kakaako and Kalaeloa Community Development Districts.

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5. **ENDANGERED SPECIES ACT, 16 USC 1531**
HBCRLF loan recipients must determine whether any endangered or threatened species or critical habitat exist within the locale of the proposed project, and take action as required if a positive determination is made.
6. **WILD AND SCENIC RIVERS ACT, 16 USC 1271**
HBCRLF loan recipients must determine whether the project or alternatives under consideration may affect a designated river or one that is being studied for possible inclusion in the system of wild and scenic rivers.
7. **ENVIRONMENTAL JUSTICE, EXECUTIVE ORDER 12898**
HBCRLF loan recipients shall attempt to identify and address disproportionately high and adverse human health or environmental effects of this project on minority populations and low-income populations.
8. **FARMLAND PROTECTION POLICY ACT, 7 USC 4201**
HBCRLF loan recipients must determine whether the proposed project will have an effect on significant agricultural lands.
9. **FISH AND WILDLIFE COORDINATION ACT, 16 USC 661**
HBCRLF loan recipients should seek the assistance of wildlife officials to determine the effect the proposed project may have on wildlife and its habitat.
10. **FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988 (1977), AS AMENDED BY EXECUTIVE ORDER 12148 (1979)**
HBCRLF loan recipients must determine if the proposed project will be located in or affect a floodplain. Projects within floodplains must document flood protection mitigation and design measures.
11. **NATIONAL HISTORIC PRESERVATION ACT, 16 USC 470**
HBCRLF loan recipients must determine whether historic properties that are included or are eligible for inclusion on the National Register are in the project area, and conduct a Section 106 consultation if necessary.
12. **PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990 (1977), AS AMENDED BY EXECUTIVE ORDER 12608 (1997)**
HBCRLF loan recipients must determine whether their proposed project will be in or will affect a wetland, and whether an alternative will be necessary.
13. **SAFE DRINKING WATER ACT, 42 USC 300f**
HBCRLF loan recipients must determine if their proposed project will affect a sole source aquifer, and whether further investigations will be necessary. This Act is not applicable to the State of Hawaii at this time.

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14. **ESSENTIAL FISH HABITAT CONSULTATION PROCESS UNDER THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT, 16 USC 1801**

HBCRLF loan recipients must determine whether a proposed project may adversely affect Essential Fish Habitat (EFH). The National Marine Fisheries Service will make maps and/or other information on the locations of EFH available as well as provide information on ways to promote conservation of EFH, in order to facilitate this assessment.

B. ECONOMIC POLICY AUTHORITIES:

1. **ADMINISTRATION OF THE CLEAN AIR ACT AND THE WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS OR LOANS, EXECUTIVE ORDER 11738**

This Executive Order prohibits assistance to facilities that are not in compliance with either the Clean Water Act or the Clean Air Act unless the purpose of the assistance is to remedy the cause of the violation.

2. **DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, PUB. L. 89-754, AS AMENDED BY 42 USC 3331**

HBCRLF loan recipients should submit information describing a proposed project's effect on local development plans to the HBCRLF lead agency.

3. **PROCUREMENT PROHIBITIONS, EXECUTIVE ORDER 11738, SECTION 306 OF THE CLEAN AIR ACT**

The recipient of federal assistance must certify that it will not procure goods, services, or materials from suppliers who are on the EPA's list of Clean Air Act violators.

4. **PROCUREMENT PROHIBITIONS, SECTION 508 OF THE CLEAN WATER ACT**

The recipient of federal assistance must certify that it will not procure goods, services, or materials from suppliers who are on the EPA's list of Clean Water Act violators.

C. SOCIAL POLICY AUTHORITIES:

1. **AGE DISCRIMINATION ACT OF 1975, 42 USC 6102**

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

2. **CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d**

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

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federal financial assistance.

3. **EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED**

This Executive Order requires all recipients of federal contracts to include certain non-discrimination and “affirmative action” provisions in all contracts. The provisions commit the contractor or subcontractor to maintain a policy of non-discrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire and train employees without regard to race, color, sex, religion and national origin.

4. **MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432**

This Executive Order sets forth in more detail the responsibilities of federal agencies for the monitoring, maintaining of data, and reporting on the use of minority enterprises.

5. **NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625**

This Executive Order directs federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.

6. **NATIONAL WOMEN’S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN’S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138**

This Executive Order directs each department or agency empowered to extend federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women’s business enterprises and to prohibit actions or policies that discriminate against women’s business enterprises on the grounds of sex.

7. **REHABILITATION ACT OF 1973, 29 USC 794**

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

8. **SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION 129**

This Amendment directs federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.

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9. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS ACT, 1993, PUB. L. 102-389

The EPA is charged with ensuring that at least 8 percent of federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

10. DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008, 40 CFR Part 33

This Rule sets forth in detail the responsibilities of entities receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, for the monitoring, maintaining of data, and reporting of the use of disadvantaged business enterprises (DBEs). The Applicant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements" and ensure that all contracts funded by a HBCRLF loan include a term or condition requiring compliance with 40 CFR Part 33, as follows:

"The Applicant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Applicant shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Applicant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other legally available remedies."

D. MISCELLANEOUS AUTHORITIES:

1. DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549

Prior to the award of a consultant or construction contract, the loan recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Applicant shall certify that the general contractor, consultant, sub-consultants, subcontractors, and suppliers are not on the Excluded Parties List. The Applicant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Applicant may access the Excluded Parties List System at <https://www.epls.gov>.

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2. **UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT, PUB. L. 91-646 (1971), AS AMENDED BY 42 USC 4601-4655**

The Act establishes a policy for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for a federally-assisted project.

3. **PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTOR'S LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED PROJECTS, EXECUTIVE ORDER 13202 (2001), AS AMENDED BY EXECUTIVE ORDER 13208 (2001)**

HBCRLF loan recipients must ensure that bid specifications, project agreements, and other controlling documents for remediation contracts awarded after February 17, 2001 do not require or prohibit agreements with labor organizations. Further, HBCRLF loan recipients and any construction manager acting upon their behalf must not otherwise discriminate against bidders, offerors, contractors, or subcontractors for entering into, or refusing to enter into, agreements with labor organizations.

II. Required Federal Forms for HBCRLF Loan Recipients

- A. The following EPA forms with original pen and ink signature are required to be submitted by the loan recipient to DBEDT/OP, on a quarterly basis:
 1. EPA Form 5700-52A, *MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance*
 2. EPA Form 6100-4, *Disadvantaged Business Enterprise Program-DBE Subcontractor Utilization Form*, to be completed by the Consultant or Contractor and submitted with bid or proposal package
 3. EPA Form 6100-3, *Disadvantaged Business Enterprise Program-DBE Subcontractor Performance Form*, to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package
 4. EPA Form 6200-03 (9-2006), *Property Profile Form-Brownfields*

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III. Boilerplate Language for Cross-cutting Requirements for Inclusion in all Contracts and Subcontracts of HBCRLF Loan Recipients

“All contracts or subcontracts of an HBCLR-funded project must comply with all the federal regulations listed herein, which have been determined to apply to the HBCRLF loan program. Federal law in effect when the Applicant’s loan agreement is signed shall apply.

A. Cross-cutting regulations

1. Environmental Authorities:

a. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 USC 469a-1

Should the contractor discover potential archaeological or historical resources during remediation of the property, all work in the area of the find shall stop and the consultant shall be called in to evaluate the situation and make recommendations to the State Historic Preservation Officer, Department of Land and Natural Resources, State of Hawaii. The Historic Preservation Officer will determine what will be necessary for construction to proceed.

2. Social Policy Authorities:

a. AGE DISCRIMINATION ACT OF 1975, 42 USC 6102

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

b. CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

c. EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED

The contractor, subcontractor, or consultant for any HBCRLF-funded project shall maintain a policy of non-discrimination in the treatment of employees, shall make this policy known to employees, and shall recruit, hire and train employees without regard to race, color, sex, religion, and national origin.

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d. REHABILITATION ACT OF 1973, 29 USC 794

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**e. MINORITY BUSINESS ENTERPRISE DEVELOPMENT,
EXECUTIVE ORDER 12432**

This Executive Order sets forth in more detail the responsibilities of federal agencies for the monitoring, maintaining of data, and reporting on the use of minority enterprises.

**f. NATIONAL PROGRAM FOR MINORITY BUSINESS
ENTERPRISE, EXECUTIVE ORDER 11625**

This Executive Order directs federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.

**g. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND
NATIONAL PROGRAM FOR WOMEN'S BUSINESS
ENTERPRISE, EXECUTIVE ORDER 12138**

This Executive Order directs each department or agency empowered to extend federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprises and to prohibit actions or policies which discriminate against women's business enterprises on the grounds of sex.

**h. SMALL BUSINESS ADMINISTRATION REAUTHORIZATION
AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION
129**

This Amendment directs federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.

**i. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND
URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS
ACT, 1993, PUB. L. 102-389**

The EPA must ensure that at least 8 percent of federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

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j. **DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008,
40 CFR Part 33**

Prior to the award of a consultant or construction contract, the Contractor or Consultant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA Financial Assistance Agreements)". The Consultant or Contractor shall notify the HBCRLF Loan Recipient prior to termination of a Disadvantaged Business Enterprise (DBE) subconsultant or subcontractor for convenience by the Contractor. In addition, the Consultant or Contractor shall employ the six good faith efforts listed in 40 CFR 33.301 when soliciting a replacement subconsultant or subcontractor.

The Consultant or Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant or Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Consultant or Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other legally available remedies.

3. **Miscellaneous Authorities:**

a. **DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549**

Prior to the award of a construction or consultant contract, the Contractor or Consultant shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Contractor shall certify that subcontractors and suppliers are not on the Excluded Parties List when the bid proposals are submitted. The Consultant shall certify that sub-consultants are not on the Excluded Parties List. The Contractor or Consultant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Contractor or Consultant may access the Excluded Parties List System at <https://www.epls.gov>.

B. Required Federal Forms:

1. The following EPA forms with original pen and ink signature are required to be submitted by the Consultant or Contractor to the HBCRLF loan recipient:
 - a. EPA Form 5700-52A, *MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance*

HAWAII BROWNFIELDS CLEANUP REVOLVING LOAN FUND

State of Hawaii • City & County of Honolulu • County of Maui

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- b. EPA Form 6100-4, *Disadvantaged Business Enterprise Program–DBE Subcontractor Utilization Form*, to be completed by the Consultant or Contractor and submitted with bid or proposal package
 - c. EPA Form 6100-3, *Disadvantaged Business Enterprise Program–DBE Subcontractor Performance Form*, to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package
2. In addition, the following EPA form shall be provided by the Consultant or Contractor to each Disadvantaged Business Enterprise subcontractor:
- a. EPA Form 6100-2, *Disadvantaged Business Enterprise Program–DBE Subcontractor Participation Form*, which may be completed by each DBE subconsultant or subcontractor and submitted to:

Mr. Joe Ochab, Region 9 MBE/WBE Coordinator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105”

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EXHIBIT B. REQUIRED FORMS

I. Applicant

1. EPA Form 6600-06 (06-2008), *Certification Regarding Lobbying*
2. EPA Form 5700-52A, *MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance*
3. EPA Form 6100-4, *Disadvantaged Business Enterprise Program–DBE Subcontractor Utilization Form*, to be completed by the Consultant or Contractor and submitted with bid or proposal package
4. EPA Form 6100-3, *Disadvantaged Business Enterprise Program–DBE Subcontractor Performance Form*, to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package
5. EPA Form 6200-03 (9-2006), *Property Profile Form–Brownfields*

II. Consultants, Contractors, and Subcontractors

1. EPA Form 5700-52A, *MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance*
2. EPA Form 6100-4, *Disadvantaged Business Enterprise Program–DBE Subcontractor Utilization Form*, to be completed by the Consultant or Contractor and submitted with bid or proposal package
3. EPA Form 6100-3, *Disadvantaged Business Enterprise Program–DBE Subcontractor Performance Form*, to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package
4. EPA Form 6100-2, *Disadvantaged Business Enterprise Program–DBE Subcontractor Participation Form*, which may be completed by each DBE subconsultant or subcontractor and submitted to:

Mr. Joe Ochab, Region 9 MBE/WBE Coordinator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Hawaii Brownfields Cleanup Revolving Loan Fund
Loan Application for East Kapolei Pesticide Mixing & Loading Area
Remediation by the Department of Hawaiian Home Lands

List of Attachments

1. Quitclaim Deed
2. Phase I & II Environmental Assessments on CDs
3. Agreement for Remedial Action with DOH (draft)
4. Project Budget/Proforma
5. Department of Attorney General Letter
6. DHHL Financial Statements
7. Architectural Inventory Survey Report
8. East Kapolei II Master Plan
9. East Kapolei II Budget